

Internal Revenue Service  
Director, Exempt Organizations

Department of the Treasury  
P.O. Box 2508 - EP/EO  
Cincinnati, OH 45201

Date: JUL 24 2001

Employer Identification Number: -  
[REDACTED]

Person to Contact - I.D. Number:  
[REDACTED]

Contact Telephone Numbers:

Phone [REDACTED]

Fax [REDACTED]

Dear Sir or Madam:

We have considered your application for recognition of exemption from Federal income tax under the provisions of section 501(c)(3) of the Internal Revenue Code of 1986 and its applicable Income Tax Regulations. Based on the available information, we have determined that you do not qualify for the reasons set forth on Enclosure I.

Consideration was given to whether you qualify for exemption under other subsections of section 501(c) of the Code. However, we have concluded that you do not qualify under another subsection.

As your organization has not established exemption from Federal income tax, it will be necessary for you to file an annual income tax return on Form 1041 if you are a Trust, or Form 1120 if you are a corporation or an unincorporated association. Contributions to you are not deductible under section 170 of the Code.

If you are in agreement with our proposed denial, please sign and return one copy of the enclosed Form 6018, Consent to Proposed Adverse Action.

You have the right to protest this proposed determination if you believe it is incorrect. To protest, you should submit a written appeal giving the facts, law and other information to support your position as explained in the enclosed Publication 892, "Exempt Organizations Appeal Procedures for Unagreed Issues." The appeal must be submitted within 30 days from the date of this letter and must be signed by one of your principal officers. You may request a hearing with a member of the office of the Regional Director of Appeals when you file your appeal. If a hearing is requested, you will be contacted to arrange a date for it. The hearing may be held at the Regional Office or, if request, at any mutually convenient District Office. If you are to be represented by someone who is not one of your principal officers, he or she must file a proper power of attorney and otherwise qualify under our Conference and Practice Requirements as set forth in Section 601.502 of the Statement of Procedural Rules. See Treasury Department Circular No. 230.

If you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Internal Revenue Code provides, in part, that:

A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within the time specified, this will become our final determination. In that event, appropriate State officials will be notified of this action in accordance with the provisions of section 6104(c) of the Code.

Sincerely,

*Steven P. Miller*

Director, Exempt Organizations

Enclosures: 3

## ENCLOSURE I

### FACTS:

The organization is applying for tax exempt status under Internal Revenue Code section 501(c)(3).

The Articles of Incorporation submitted indicate that you were incorporated under the State of [REDACTED] Nonprofit laws on [REDACTED].

An amendment to the Articles was approved by the Secretary of State of [REDACTED] on [REDACTED] which changed the corporation from a stock holding corporation to a non-stock holding corporation.

The organization has not engaged in any activity thus far.

The Form 1023 lists the organization's primary activities as follows:

- Provide the homeless and poor with job training.
- Provide trainees with housing.
- Provide meals and clothing to the needy.
- Obtain facilities to provide the services outlined.

Section IV, part A of the Articles of Incorporation indicate that the organization will "supervise, direct and sponsor humanitarian and Christian education to help poor and homeless people by providing them with housing, clothing, food, counseling...minor medical care..."

Section IV, part I of the Articles of Incorporation (page 3) provides that the organization "may start other businesses outside of the non-profit organization that will provide job training." Item 1 of Section IV, part I states that the purpose is to train individuals to work for major hotels and related businesses around the country. Item 2 goes on to provide that the training will be accomplished by "soliciting donations to build structures and provide food and shelter which will include corporate headquarters, up to 300 hotel rooms, small convention area and meeting rooms, restaurants, Church, gift shops and recreation facilities such as swimming pools, miniature golf, basketball, volleyball, tennis, and possibly golf.." Item 3 indicates that the organization will provide skilled management to provide training "in all facets of travel and car rental agencies, computer training and other related businesses located off and on premises related to job training programs.."

Section V of the Articles of Incorporation (page 4) indicate that the "general aims shall be implemented by personal counseling of Bible study, Sunday schools, Sunday worship services, by neighborhood centers. ...."

The organization has estimated that it will require \$[REDACTED] million to build/obtain and run a resort (which will be located in [REDACTED]) and institute its training programs.

[REDACTED] will operate the resort and related businesses (i.e. retail shops, restaurants, travel agency, golf course...) with a permanent skilled staff. Department managers will be used to train selected homeless/poor in specified jobs. The trainees will follow the staff, observe and assist the resort employees on their daily routines.

It is indicated that ■ individuals would be trained (and provided housing if needed) at any given time.

The organization's anticipated sources of funding are identified as:

- Federal/state grants
- Donations (of cash, land, real estate, personal property)
- Earnings from commercial/residential facilities and other businesses operated.

The organization expects the proceeds from the retail services (resort and shops) to support the training programs of the organization.

#### ISSUE:

Does the organization qualify for exemption from Federal income tax as an organization described in section 501(c)(3) of the Internal Revenue Code?

#### LAW:

Section 501(c)(3) of the Internal Revenue Code describes certain organizations exempt from income tax under section 501(a) and reads in part as follows:

“(3) Corporations, and any community chest, fund or foundation organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, (except as otherwise provided in subsection (h)), and which does not participate in or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.”

Section 1.501(c)(3)-1(a)(1) of the income tax Regulations provides that in order to be exempt as an organization described in section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in such sections. If any organization fails to meet either the organizational test or the operational test, it is not exempt.

Section 1.501(c)(3)-1(b)(1)(i) of the income tax Regulations provides that an organization is organized exclusively for one or more exempt purposes only if its Articles of organization (a) limit the purposes of such organization to one or more exempt purposes; and (b) do not expressly empower the organization to engage otherwise than an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purpose.

Section 1.501(c)(3)-1(c)(1) of the income tax Regulations provides that an organization will be regarded as “operated exclusively” for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(d)(2) of the income tax Regulations defines the term "charitable" as used in section 501(c)(3) of the code as including the relief of the poor and distressed or of the under-privileged and the advancement of education.

Section 1.501(c)(3)-1(d)(3)(i)(a) of the income tax Regulations defines the term "educational" as including the instruction or training of the individual for the purpose of improving or developing his capabilities.

Section 1.502-1 of the income tax Regulations provides that an organization operated for the primary purpose of carrying on a trade or business for profit is not exempt under section 501 on the grounds that all profits are payable to the section 501 organization(s).

Revenue Ruling 73-127, 1973-1 CB 221 describes an organization operating a retail grocery outlet store providing on-the-job training to unemployed individuals. It was determined that the operation of the retail store was not a recognized charitable purpose and that the size and manner of the operation of the store constituted in itself an independent objective of the organization.

In Revenue Ruling 73-128, 1973-1 CB 222, an organization formed to provide educational and vocational training and guidance was considered engaging in activities of the charitable and educational nature and therefore exempt under IRC 501(c)(3). Although the training program centered around the manufacture and sale of a line of toy products, it was held that the manufacturing and merchandising operation was a means of accomplishing the organization's declared charitable objective. Not only was there a clear and distinct causal relationship between the manufacturing activity and the training of the individuals, but there was no evidence that the scale of the endeavor was on a larger scale than reasonable necessary to accomplish the organization's charitable purpose.

In Schoger Foundation v Commissioner, 76 T.C. 380 (1981) it was held that if an activity serves a substantial nonexempt purpose, the organization does not qualify for exemption even if the activity also furthers an exempt purpose.

In Better Business Bureau of Washington, DC v. United States, 326 U.S. 279 (1945) it was held that a single nonexempt purpose that is substantial in nature will preclude exemption.

#### ANALYSIS:

All of the preceding Code sections, Regulation sections and court cases describe the criteria under which an organization may be exempt under section 501(c)(3) of the Internal Revenue Code and when an organization is deemed not to be exempt under section 501(c)(3) of the Internal Revenue Code.

In order to qualify for exemption under section 501(c)(3) an organization must be both organized and operated exclusively for one or more of the purposes specified in that section.

The organization's purpose of providing job training for the poor and homeless does constitute a charitable and educational purpose within the meaning of section 501(c)(3) of the Code and sections 1.501(c)(3)-1(d)(2) and 1.501(c)(3)-1(d)(3)(i)(a) of the Regulations.

However, the organization's ownership and operation of a resort and related businesses to provide hotel services, travel services (travel agency, car rental agency), retail services (stores) and entertainment (golf course) to the public is not a recognized charitable/educational purpose or in this instance an allowable means to further the exempt purposes. Although the job training involved requires a suitable on-the-job training setting, the scope of the "resort" operation and the related facts of the case indicate that the "resort" is in itself an independent objective of the organization and its primary activity. The "resort" operation is conducted on a much larger scale than reasonably necessary, if necessary at all, for the performance of the organization's job training program. The "resort" would be characterized as the operation of a trade/business.